Davis Abatement Systems, Inc. ***and*** **James Streholski.** Case 30–CA–12879

October 10, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge filed by James Streholski, an individual, on May 8, 1995, the General Counsel of the National Labor Relations Board issued a complaint on August 13, 1996, against Davis Abatement Systems, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although the Respondent filed an answer on August 22, 1996, the Respondent withdrew that answer on August 29, 1997.

On September 9, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On September 10, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Here, although the Respondent initially did file an answer, the Respondent withdrew its answer to the complaint on August 29, 1997. The Respondent's withdrawal of its answer to the complaint has the same effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Fond du Lac, Wisconsin, has been engaged in the business of asbestos removal and selective demolition. During the calendar year ending December 31, 1995, the Respondent, in conducting its business operations, purchased and received products, goods, and materials at its facility in Fond du Lac, Wisconsin, valued in excess of $50,000 directly from suppliers located outside the State of Wisconsin. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Laborers' International Union of North America Local 1086 (the Union) is now and has been at all material times a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Workers who are properly trained and have the necessary skills, certification or license to handle abatement of asbestos in construction as well as the necessary skills to handle and use the proper equipment and safeguard for same. The Employer also recognizes and acknowledges that the Union is the exclusive representative for all employees of the Employer in the classification and categories of work covered by this Agreement for the purposes of collective-bargaining as provided by the Labor-Management Act of 1947, as amended.

About September 20, 1994, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement effective from September 24, 1994, to May 31, 1996 (the 1994–1996 agreement), without regard to whether the majority status of the Union has ever been established under the provisions of Section 9(a) of the Act. The 1994–1996 agreement contains provisions relating to safety, specifically that the Respondent will provide employees with protective clothing and respirators.

On February 6, 1995, Charging Party James Streholski, while working on the jobsite in Monroe, Wisconsin, complained to the Respondent concerning the lack of proper respirators and clothing, insufficient supplies of air, and other safety problems in violation of the 1994–1996 agreement, complained to the Respondent that unit work was being performed by nonunit persons, in violation of the 1994–1996 agreement, called the Union to inform it of the contract violations, and called OSHA to report the safety violations. These claims relate to the 1994–1996 agreement. These activities, including contacting OSHA to report

safety violations, constitute concerted complaints regarding wages, hours, and working conditions protected by the Act.

On February 8, 1995, the Respondent threatened Streholski with discharge if he continued to contact the Union concerning the contract violations, threatened Streholski with discharge for contacting OSHA, and discharged Streholski. The Respondent engaged in these activities, because Streholski engaged in the protected, concerted activity described above, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By threatening and discharging Streholski, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging James Streholski, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Davis Abatement Systems, Inc., Fond du Lac, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge or discharging them for engaging in protected, concerted activities or to discourage employees from engaging in these activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer James Streholski full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make James Streholski whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful discharge and, within 3 days thereafter, notify the discriminatee in writing that this has been done.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Fond du Lac, Wisconsin, copies of the attached notice marked ''Appendix.''[1] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 8, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 10, 1997

William B. Gould IV,	Chairman
Sarah M. Fox,	Member
John E. Higgins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with discharge or discharge them for engaging in protected, concerted activities or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer James Streholski full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make James Streholski whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in a decision of the National Labor Relations Board.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful discharge and, within 3 days thereafter, notify James Streholski in writing that this has been done.

DAVIS ABATEMENT SYSTEMS, INC.